Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1444

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,
Petitioner,

vs.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit

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vs.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit

The Petitioner, International Association of Machinists and Aerospace Workers, AFL-CIO (hereinafter "I.A.M."), respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on March 4, 1975.

This petition is presented separately (as authorized by Rule 46), in support of the Petition for Writ of Certiorari, now pending before this Court, as No. 74-1378, styled *General Dynamics Corporation v. Equal Employment Opportunity Commission.*

OPINIONS BELOW

The *per curiam* opinion of the Court of Appeals,[1] not yet reported, appears in the Appendix hereto (App. p. A-1). It is based solely[2] upon the majority opinion of a divided Circuit Court panel in *EEOC v. Louisville & Nashville Ry. Co.*, 505 F.2d 610, in which there is pending a petition for certiorari docketed as No. 74-1294.

The Opinion of the District Court for the Northern District of Texas is reported at 382 F.Supp. 59, and appears in the Appendix hereto (Appendix, pp. A-5-21). The final judgment of the District Court dismissing the action appears in the Appendix hereto (App. p. A-21).

JURISDICTION

The judgment of the Court of Appeals was entered on March 4, 1975 (Appendix p. A-3). This petition for certiorari is being filed within 90 days of that date. The Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

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[1] The Fifth Circuit panel in the instant case was, according to the practice in that Circuit "not free" to consider the issue in the instant case, ". . . for we can overrule Fifth Circuit cases only when we sit *en banc*," *U.S. v. Bailey*, 468 F.2d 652 at 668 (5th Cir. 1972).

[2] EEOC made no attempt before the Circuit Court to justify its position in the instant case, except to assert (Appellants Brief, p. 3):

> "This Court is required to follow the decision in *EEOC v. Louisville and Nashville Railroad* unless the decision is reversed by the Court *en banc*. See *United States v. Bailey*, 468 F.2d 652, 668 (5th Cir. 1972)."

QUESTION PRESENTED

Does §706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, [42 U.S.C. §2000e-5(f)(1) (1972)], permit the Equal Opportunity Commission to file suit without regard to any time limitations?

STATUTORY PROVISIONS INVOLVED

Sections 706 and 707(e) of the Civil Rights Act of 1964, as amended in 1972, 42 U.S.C. §2000e-5 and 6(e) are reproduced in the Appendix (App. pp. A-22-29).

STATEMENT OF THE CASE

Upon charges[3] filed at various times beginning in 1967 the EEOC filed an action in the United States District Court against General Dynamics, the I.A.M., and the several local unions which are parties to collective bargaining agreements with General Dynamics at its Fort Worth, Texas, facility. The suit claims violation of Title VII of the Civil Rights Act, as amended, in General Dynamics' alleged racial and sex discrimination. Injunctive and money damage relief is sought against General Dynamics, and the unions' collective bargaining agreements are sought to be altered.[4]

The EEOC's suit was filed in 1974, more than six years after the initial charge, and almost a year after the last of the charges.

The suit was dismissed on the ground that EEOC lacked the statutory power to bring the action, as it was filed more than 180 days after the filing of the charges.[5]

The Court of Appeals reversed and remanded with directions to reinstate the complaint. See notes 1 and 2, *supra*, p. 2.

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[3] No charge was ever filed against I.A.M., though later charges named an autonomous local union.

[4] EEOC advised the District Court (Memo Brief 4/5/75):

> "Plaintiff has joined each of these unions as a Defendant pursuant to Fed.R.Civ.P. 19(a)(2). The Complaint charges none of these unions with violations of Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. (Supp. II) § 2000e, *et seq.* (hereinafter "Title VII") but alleges that each has an interest relating to the subject of this law suit since each is currently a party to a collective bargaining agreement with Defendant General Dynamics Corporation . . . in granting 'such further relief as the Court deems necessary and proper,' this Court may need to enjoin these unions from the temporary and/or permanent enforcement of portions of their collective bargaining agreements with Defendant General Dynamics."

[5] Both General Dynamics and I.A.M. filed Motions to Dismiss. The District Court's opinion dismisses the entire suit on General Dynamics' Motion, without mentioning the similar motion filed by I.A.M.

REASONS FOR GRANTING THE WRIT

This case involves an important question of federal law which has not been, but should be, settled by this Court.

1

The negotiation and enforcement of collective bargaining agreements are at the core of the national labor policy.[6] The basic statute protecting and controlling these activities, in § 10(b),[7] precludes attack upon these agreements unless brought within six months of the execution of the agreement. This Court in *Local 1424, Intl. Assn. of Machinists v. NLRB*, 362 U.S. 411 (1960).[8] recognized and enforced the policies underlying this six month limitation, viz; 362 U.S. 411 at 419:

> "These policies are to bar litigation over past events 'after records have been destroyed, witnesses have gone elsewhere, and recollections of the events in question have become dim and confused,' HR Rep. No. 245, 80th Cong. 1st Sess., p. 40, and of course to stabilize existing bargaining relationships."

I.A.M.'s Motion sought dismissal "In that Plaintiff did not bring its suit within the time prescribed by § 706(f) (1) . . ." I.A.M. also raised failure to file charge against I.A.M., and failure to attempt conciliation. The District Court found it unnecessary to consider these latter issues, since the suit was dismissed on the limitation point. Cf. District Court's Opinion at ftnt. 2, 382 F.Supp. 59, at 60.

[6] See "Findings and Policies" in § 1 of the NLRA, 49 Stat. 449 (1935) as amended 29 U.S.C. §§ 151-168 at § 151.

[7] 29 U.S.C. § 160 (b) provides: ". . . no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the [National Labor Relations] Board . . ."

[8] Compare *International Union v. Hoosier Cardinal*, 383 U.S. 696 (1966), where the question of timeliness of suits brought under § 301 of Taft-Hartley (29 U.S.C. § 185) to enforce collective bargaining contracts was recognized as of such importance as to warrant review here by certiorari.

The Court of Appeals' holding in the instant case is at war with these policies. It permits, without any time limitation, attack upon collective bargaining agreements which otherwise function "of course to stabilize existing bargaining relationships" *Ibid.* at 419. A charge more than six years stale is viewed as the foundation for efforts to redo long established bargaining patterns—though such charge was aimed only at the employer.

Not only is there no charge against this union, but litigation is permitted to proceed years after union administrations have been replaced;[9] and here, as in the cited case, long "after records have been destroyed, witnesses have gone elsewhere, and recollections of the events in question have become dim and confused."

2

The decision below likewise runs counter to the policies basic to the 1972 amendments to Title VII of the Civil Rights Act. Congressional concern that prompt resolution of civil rights complaints be effected is consistently reflected in the 1972 amendments.

Section 706(f)(1), § (e) requires that the aggrieved individual file his charge with the Commission within the 180 days after the alleged unlawful employment practice. Thereafter, during the first thirty days, conciliation is to be attempted by the Commission. Then, within the remaining 150 days, the Commission can file suit. If it does not do so, then the right to sue vests in the aggrieved individual who must sue within the 90 days after receiving notice from the Commission. If the Commission has not timely filed a suit itself, it then retains a limited right of intervention in such a private suit.

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[9] Landrum-Griffin requires periodic elections—at least every three years at the local union level, and every five years in International unions. See Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 481, Title IV, § 401(a).

The time limitation is further reflected by subsection (b) emphasizing that the Commission shall, so far as practical, make its determination as to reasonable cause within 120 days after the filing of the charge and to conciliate if possible. In the event conciliation has not been effected within the 180 days and the Commission has filed suit, then the last sentence of subsection (f)(1) gives the Court the power to stay court proceedings for not more than 60 days pending further efforts of the Commission to obtain voluntary compliance.

Subsection (f)(2) permits appropriate temporary and preliminary relief pending final disposition of a charge. Subsection (f)(4) makes it the duty of the chief federal judge in the district in which the case is pending immediately to designate a judge in such district to hear and determine the case. Subsection (f)(5) provides that it should be the duty of the judge so designated to set for hearing at the earliest practicable date and to cause the case to be in every way expedited.

These statutory indications of intent to require prompt determination are ignored by the Court of Appeals.

More detailed analysis here of the Congressionally mandated enforcement procedures would unduly lengthen this petition. We refer this Court to Judge Moore's dissent in *EEOC v. Louisville & Nashville R. Co.*, 505 F.2d 610 at 617-620 (5th Cir. 1974; pending an application for certiorari, as No. 74-1294, and appearing in the Appendix hereto, App. pp. A-30-34), and to the District Court's careful analysis of the statutory scheme in the instant case, 382 F.Supp. 59-68 (N.D.Tex., 1974; App. pp. A-5-21, *infra*).

3

The Court of Appeals' disposition of this case aborts the conciliation process provided in the statute. Meaningful conciliation necessarily must occur within a known time frame. The statutory scheme initially envisions compliance through the process of conciliation; court action is to me instituted only after the con-

ciliation process has been tried. The pressure upon the Commission and the parties to engage in meaningful conciliation evaporates when charges lie forgotten for years. The Congress recognized as much in the thirty day provision in the initial sentence in §§(f)(1), and in the provision for private right to sue within short time limits appearing later in that sub-section. The statutory scheme envisions prompt conciliation, and that failing, a private suit in which the Commission may intervene if it wishes. It neither contemplates nor permits unlimited hiatus.

4

Finally, as noted in the District Court's opinion, "there are numerous district court opinions on the matter reflecting a clear split of authority," 382 F.Supp. 59 at 63, note 11 where the cases are collected. *General Dynamics'* petition for certiorari in the instant case displays the lengthy list of cases in which the lower courts have come to differing conclusions on this issue.[10] More recently, *EEOC v. Wilson & Co.*, 387 F.Supp. 1224 at 1226-1231 (D.C. Colo., 1975), collects the cases pro and con, notes the "clear split of authority", and dismisses for failure to file within the limitation period.

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[10] These are:

Cases holding a limitation:

EEOC v. Kimberly-Clark Corp., 380 F.Supp. 1106 (W.D.Tenn. 1974), *rev'd*, — F.2d —, 9 EPD ¶ 9752, 10 FEP Cases 38; *EEOC v. U.S. Pipe & Foundry*, 375 F.Supp. 237 (N.D.Ala. 1974); *EEOC v. Louisville & Nashville R.R. Co.*, 368 F.Supp. 633 (N.D.Ala. 1974); *rev'd* 505 F.2d 610; *EEOC v. Griffin Wheel*, 360 F.Supp. 424 (N.D.Ala. 1974); *EEOC v. Berman Bros.*, 7 EPD ¶ 9212, 8 FEP Cases 96 (N.D.Ala. 1974); *EEOC v. Cleveland Mills*, 364 F.Supp. 1235 (W.D.N.C. 1973), *rev'd* 502 F.2d 153 (4th Cir. 1974), *cert. denied*, — U.S. — (1975); *EEOC v. Birmingham Stove & Range Co.*, Civ. No. 730-M-201 (N.D.Ala. 1974); *EEOC v. General Dynamics Corp.*, 382 F.Supp 59 (N.D.Tex. 1974), *rev'd* — F.2d —.

Cases holding no limitation:

EEOC v. Louisville & Nashville R.R. Co., 505 F.2d 610 (5th Cir. 1974); *EEOC v. General Dynamics Corp.*, — F.2d — (5th

Additionally, thousands of labor unions administering collective bargaining agreements which are facially neutral and by which stability in labor relations is maintained, are in jeopardy of prohibitively expensive litigation based on stale charges (many of which are directed only at the employer) unless this court determines the issue.

The grant of certiorari, and reversal here will not impede compliance with the high purpose of the Civil Rights Employment legislation. *Current* racial or sex discrimination will remain subject to current charges, and prompt conciliation and court action as necessary within the statutory scheme. The dismissal of ancient charges which have been gathering dust through the years will indeed hasten the day when prompt attention can be given to correcting instances of current discrimination.

Cir. 1975); *EEOC v. Cleveland Mills*, 502 F.2d 153 (4th Cir. 1974); *cert. denied* — U.S. — (1975); *EEOC v. Kimberly-Clark Corp.*, —F.2d —, 9 EPD ¶ 9952, 10 FEP Cases 38 (6th Cir. 1975); *EEOC v. Bartender's Int'l Union*, 369 F.Supp. 827 (N.D.Cal. 1973); *EEOC v. Mobil Oil Corp.*, 362 F.Supp. 786 (W.D.Mo. 1973); *EEOC v. Duff Bros., Inc.*, 364 F.Supp. 405 (E.D.Tenn. 1973); *EEOC v. Eagle Iron Works*, 367 F.Supp. 817 (Iowa 1973); *EEOC v. Huttig Sash & Door*, 371 F.Supp. 848 (S.D.Ala. 1974); *EEOC v. U.S. Industries, Inc.*, 7 EPD ¶ 9295, 7 FEP Cases 171 (W.D.Tenn. 1974); *EEOC v. E. I. DuPont de Nemours & Co.*, 373 F.Supp. 1321 (Del. 1974); *EEOC v. Christiansburg Garment Co.*, 376 F.Supp. 1067 (W.D.Va. 1974); *EEOC v. Joint Apprenticeship Committee*, 7 EPD ¶ 9334 (N.D.Cal. 1974); *EEOC v. Rollins, Inc.*, 8 EPD ¶ 9557, 8 FEP Cases 492 (N.D.Ga. 1974); *EEOC v. Western Electric*, 382 F.Supp. 787 (Md. 1974); *EEOC v. Hickey-Mitchell Co.*, 372 F.Supp. 1117 (E.D.Mo. 1973); *EEOC v. Mississippi Federated Cooperative Services*, 8 FEP Cases 731 (S.D.Miss. 1974); *Patterson v. American Tobacco Co.*, 8 EPD ¶ 9722 (E.D.Va. 1974); *EEOC v. United Aircraft Corp.*, 383 F.Supp. 1313 (D.Conn. 1974); *EEOC v. Rexall Drug Co.*, 9 EPD ¶ 9936 (E.D.Mo. 1974).

CONCLUSION

Accordingly, a writ of certiorari should issue to review the judgment of the Fifth Circuit.

Respectfully submitted

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